



**Billing Code: 3410-30-P**

**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Part 273**

**RIN 0584-AE43**

**Supplemental Nutrition Assistance Program: Standard Utility Allowances Based on the Receipt of Energy Assistance Payments Under the Agricultural Act of 2014**

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Proposed Rule.

**SUMMARY:** This proposed rule would revise Supplemental Nutrition Assistance Program (SNAP) regulations in accordance with amendments made to the Food and Nutrition Act of 2008 (the Act) that requires States that elect to use a heating or cooling standard utility allowance (HCSUA) in SNAP eligibility determinations to make the HCSUA available to households that have received a payment under the Low-Income Home Energy Assistance Act of 1981 (LIHEAA) (known as a Low-Income Home Energy Assistance Program (LIHEAP) payment), or other similar energy assistance program payment, greater than \$20 annually in the current month or in the immediately preceding 12 months.

**DATES:** Written comments must be received on or before [insert 60 days from date of publication in the Federal Register] to be assured of consideration.

**ADDRESSES:** The USDA Food and Nutrition Service invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Preferred Method:* Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Send comments to Sasha Gersten-Paal, Branch Chief, Certification Policy Branch, Program Development Division, FNS, 3101 Park Center Drive, Alexandria, Virginia 22302, 703-305-2507.

All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the Internet via <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Sasha Gersten-Paal, Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302, 703-305-2507.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Food and Nutrition Act of 2008, as amended, establishes uniform national eligibility standards for SNAP, including the definition of a SNAP household, countable income and assets, allowable deductions from gross income, and maximum benefit levels. Households are allowed to deduct certain amounts from their gross monthly income,

including shelter expenses that exceed 50 percent of their income after all other deductions (up to a maximum limit for households that do not have elderly or disabled members). Household benefits are calculated based on the household's maximum allotment and net income; households with lower net incomes generally receive larger benefits than households with higher net incomes.

Shelter expenses include the basic cost of housing as well as utilities and other allowable expenses. In order to simplify program administration, States are permitted to establish Standard Utility Allowances (SUAs) that households may use in lieu of actual utility expenses. States may establish multiple SUAs to reflect differences in households' circumstances. The heating or cooling SUA (HCSUA) is one such SUA and is available to households that pay heating or cooling expenses separate from their rent or mortgage, as well as households that receive Low-Income Home Energy Assistance Program (LIHEAP) payments or other similar energy assistance program payments. Households that do not pay heating or cooling expenses out-of-pocket but that are billed directly for other utility costs are entitled to a SUA (or SUAs) appropriate to the types of utility expenses they incur, where applicable.

For the purposes of the HCSUA, receipt of a LIHEAP payment serves as a reasonable proxy for the actual utility costs that a household incurs, providing a simpler way for States and applicants to determine utility costs. Before the enactment of the Agricultural Act of 2014, Section 5(e)(6)(C)(iv) of the Act provided that all households receiving a LIHEAP payment or on behalf of which a LIHEAP payment was made automatically qualified for the HCSUA, regardless of the amount of the LIHEAP payment. Current regulations at 7 CFR 273.9(d)(6)(iii)(C) reflect this requirement.

Section 4006 of the Agricultural Act of 2014 amends Section 5(e)(6)(C)(iv)(I) of the Act by requiring States electing to use an HCSUA to make the HCSUA available to households that received a payment or on behalf of which a payment was made under the Low-Income Home Energy Assistance Act of 1981 or other similar energy assistance program, if in the current month or in the immediately preceding 12 months, the household either received such a payment or such a payment was made on behalf of the household that was greater than \$20 annually.

This rule codifies guidance FNS issued to States following passage of the Agricultural Act of 2014. The Department is proposing to amend the regulations at 7 CFR 273.9(d)(6)(iii)(C) to incorporate these changes.

#### **Other Similar Energy Assistance Program**

Section 5(e)(6)(C)(iv)(I) of the Act, as amended by Section 4006 of the Agricultural Act of 2014, provides for the HCSUA upon receipt of LIHEAP payments as well as payments from an “other similar energy assistance program.” The Department is also proposing to amend the regulations at 7 CFR 273.9(d)(6)(iii)(C) to establish a standard for determining what constitutes an “other similar energy assistance program.” “[O]ther similar energy assistance program” would be defined as a separate home energy assistance program designed to provide heating or cooling assistance through a payment directly to or on behalf of low-income households.

For the purposes of this preamble discussion, the phrase “qualifying LIHEAP or other payment” refers to those LIHEAP or other similar energy assistance program payments

that are in excess of \$20 annually and have been received by or made on behalf of the household in the current or immediately preceding 12 months.

The language in the Act refers to LIHEAP or other similar energy assistance program payments received by or made “on behalf of” households, while the existing regulatory language refers to direct or indirect payments received by households. To support consistency, the Department proposes that the regulatory language reflect the statutory language.

### **Qualifying LIHEAP or Other Payment**

Section 5(e)(6)(C)(iv)(I) of the Act, as amended by Section 4006 of the Agricultural Act of 2014, requires that the payment received by or made on behalf of the household must exceed \$20 annually. The Department does not have discretion to alter the \$20 threshold. However, standards regarding the payment would be important and helpful in order to ensure uniformity across State agencies. Therefore, the payment must be quantifiable in order to be acceptable for purposes of granting the HCSUA. By quantifiable, the Department means that the State agency must be able to quantify, in dollars, the amount of the payment. The Department is proposing to codify these requirements at revised 7 CFR 273.9(d)(6)(iii)(C)(1)(iii).

Section 5(e)(6)(C)(iv)(I) of the Act also requires receipt of the payment in the “current” month or the immediately preceding 12 months in order to confer eligibility for the HCSUA. As proposed, the “current month” refers strictly to the calendar month, meaning from the first to the final day of a given month.

On a related note, the Department proposes to revise language at 7 CFR 273.10(d)(6), which currently provides that all energy assistance payments except for those made under the LIHEAA must be prorated over the entire heating or cooling season that the payment is intended to cover. This was a technical error that FNS proposes to correct in this rule. Such a correction is consistent with the language in the Agricultural Act of 2014 that qualifying LIHEAP payments must be received in the current month or the immediately preceding 12 months in order to confer eligibility for the HCSUA. Additionally, the Agricultural Act of 2014 struck language in Section 5(e)(6)(C)(iv)(I) of the Act requiring that households incur “out-of-pocket heating or cooling expenses in excess of any assistance paid on behalf of the household to an energy provider.” In light of these changes made by the Agricultural Act of 2014, FNS is proposing to amend 7 CFR 273.10(d)(6) to reflect the requirement in Section 5(e)(6)(C)(iv)(IV) that assistance under LIHEAA be considered to be prorated over the heating or cooling season.

The new language in Section 5(e)(6)(C)(iv)(I) of the Act no longer allows a household to qualify for a HCSUA based on anticipated receipt in future months. This rule proposes that applying the HCSUA to a household’s case based on anticipated receipt is only permissible if the payment is anticipated to be received by the household within the current calendar month. At the State agency’s option, if a qualifying LIHEAP or other payment greater than \$20 (or payment which would bring the household’s total payments for the year to a total greater than \$20) is scheduled for the current month, the payment may be considered to have been received for the purposes of conferring eligibility for the HCSUA. However, if the payment is not actually made within that month, benefits received by the household would be considered an overissuance and the State agency

should pursue a claim against the household for any benefits issued in error in accordance with its established claims management procedures. The Department is proposing to revise 7 CFR 273.9(d)(6)(iii)(C) accordingly to codify these requirements.

State agencies would be responsible for tracking the date and receipt of the qualifying LIHEAP or other payment to ensure the payment satisfies the timing requirements and exceeds the \$20 minimum threshold. The Department encourages State agencies to modify data sharing agreements with their respective LIHEAP agencies, as appropriate, to ensure transmission of timely and accurate information needed for SNAP eligibility and benefit determinations.

If a household has not received a qualifying LIHEAP or other payment at the time of certification and has not incurred actual utility expenses, the household would not be entitled to the HCSUA at certification. If the household were to subsequently receive a qualifying LIHEAP or other payment, or if one were made on the household's behalf during the certification period, the State agency would need to take action according to the rules of their chosen reporting system under 7 CFR 273.12.

The Department notes that this provision does not affect a household's ability, if any, to use actual costs rather than the standardized HCSUA. SNAP households that are billed directly for utility costs are entitled to a Standard Utility Allowance (SUA) appropriate to the types of utility expenses they incur. In States that do not have mandatory SUA policies, the household is entitled to use its actual costs, rather than the standard. The Department encourages all State agencies to review their available utility allowances to

ensure that all households with actual expenses are able to claim an allowance that best represents that types of utility expenses they have.

As a related issue, the regulations at 7 CFR 273.9(d)(6)(iii)(C) as currently written provide that a HCSUA is available to households in private rental housing who are billed by their landlords on the basis of individual usage or who are charged a flat rate separately from their rent. However, the Department understands that some individuals renting in public housing may also be billed based on individual usage or separately from their rent. Although the more common situation is for public housing properties to include heating and cooling costs in the rent, public housing rental situations with separate heating and cooling costs do exist. For these reasons, the Department is proposing a technical correction to §273.9(d)(6)(iii)(C) by removing the word “private” from this provision.

In States with mandatory HCSUAs, utility costs do not require verification for SNAP purposes, unless questionable. Similarly, receipt of more than \$20 in qualifying LIHEAP or other payments would not require verification for SNAP purposes, unless questionable. In States that do not mandate use of the HCSUA, verification of utility costs is mandatory if the household wishes to claim utility costs in excess of the State agency’s HCSUA and the expense would actually result in a deduction. State agencies should consider program access, integrity, and the potential for Quality Control errors in determining their verification procedures.

### **Special Circumstances**



State agencies that use the HCSUA would need to make the HCSUA available to SNAP households that have received a qualifying LIHEAP or other similar energy assistance program payment, regardless of any change in the household's residence or address. The Act does not specify that the qualifying LIHEAP or other payment must be received at the household's current address or place of residence.

If the State agency has an indication that a household received a qualifying LIHEAP or other payment in another State, the State would need to act on it. Again, for States that have elected to use a HCSUA, the HCSUA would need to be made available to households that have received a qualifying LIHEAP or other payment, provided that the payment was received in the current month or preceding 12 months and was in excess of \$20 over the same time period.

If a household that has received a qualifying LIHEAP or other payment subsequently splits into two SNAP households, State agencies would need to determine which one household is eligible for the HCSUA based on the qualifying LIHEAP or other payment. The Department believes the State agency is in the best situation to determine which household would receive the HCSUA based on the qualifying LIHEAP or other payment. As with other discretionary policy decisions, a State's chosen policy would need to be applied in a consistent and equitable way. The Department is proposing to revise 7 CFR 273.9(d)(6)(iii)(C) to incorporate these standards.

The Department has received several inquiries regarding weatherization projects and eligibility for the HCSUA. The Department understands that State agencies may use a portion of LIHEAP block grant funding to support weatherization projects. Section

5(e)(6)(C)(iv) of the Act requires State agencies that use the HCSUA to make the HCSUA available to SNAP households that have received a LIHEAP or other payment, provided the payment was received by or made on behalf of the household in the current or preceding 12 months and exceeds \$20 annually.

The Act does not explicitly address how State agencies should evaluate LIHEAP funds that are used to pay for weatherization projects on behalf of households in multi-family dwellings. However, to be an acceptable qualifying LIHEAP or other payment, the payment must be quantifiable to the household. The Department is proposing that weatherization projects for multi-family dwellings cannot confer eligibility for the HCSUA for households within the multi-family dwelling. The Act does not explicitly address how State agencies should evaluate LIHEAP funds that are used to pay for weatherization projects in multi-family dwellings. However, in a June 15, 1999 Information Memorandum issued by the Department of Health and Human Services (HHS), which oversees LIHEAP at the Federal level, HHS determined that weatherization of multi-unit buildings “is not a benefit provided to an individual, household or family eligibility unit.” Because the Act requires that the LIHEAP or other payment must have been received by or made on behalf of a household, the Department is proposing that such payments cannot confer eligibility for the HCSUA. However, the Department requests comment on whether HHS’ guidance is fully applicable in this situation, such as when weatherization of multi-family dwellings is funded by other similar energy assistance programs, and is considering alternative approaches that may allow multi- family dwelling weatherization projects to confer eligibility for the HCSUA.

The Department requests comment on this proposal as well as potential alternative approaches.

## **Procedural Matters**

### **Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

### **Regulatory Impact Analysis**

As required for all rules that have been designated as significant by OMB, a RIA was developed for this proposed rule. The RIA for this rule was published as part of docket number [Docket Placeholder] on [www.regulations.gov](http://www.regulations.gov). A summary of the analysis follows:

The Regulatory Impact Analysis (RIA) that accompanies this proposed rule outlines the savings to the Government as well as the effect of the proposed rule on low-income families, program participation, and State agencies. The RIA also outlines the

uncertainty in assumptions on savings and alternatives considered when drafting the proposed rule.

The Department estimates that the total savings to the Government from reduced SNAP benefits will be \$2.2 billion between FY 2016 and FY 2020. The Department estimates that the effect of the rule on low-income families will result in potentially smaller benefit amounts for some families, primarily those living in States that have minimum LIHEAP payments below the new minimum threshold for LIHEAP payments required to be eligible for a HCSUA. The Department estimates that the impact on SNAP participation will be minimal, with one-fourth of households in States that do not increase their LIHEAP payment above the \$20 threshold seeing a decrease in benefits, but likely still being eligible to participate in the program. The Department estimates that the impact on State agencies will be minimal since States already made changes to their current caseload in accordance with the timeframes established under Section 4006 of the Agricultural Act of 2014 and the FNS guidance implementing Section 4006. There is some uncertainty concerning the estimates in the RIA, in part because they assume no changes in State behavior over time. Thirteen States have increased their minimum LIHEAP payments following the enactment of Section 4006 of the Agricultural Act of 2014. If one or more of these thirteen states decreases or discontinues these minimum payments in future years, savings would increase. Conversely, if any additional States decide to issue LIHEAP payments above the \$20 threshold in future years, savings would decrease. The Department did not consider any alternatives to this rule because the language in the Agricultural Act of 2014 was very specific and prescriptive regarding the implementation dates and the payment threshold required.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this proposed rule would not have a significant impact on a substantial number of small entities. State agencies that administer SNAP will be affected to the extent they implement the changes to program operations.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of

\$100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### **Executive Order 12372**

SNAP is listed in the Catalog of Federal Domestic Assistance Programs under 10.551.

For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

### **Federalism Summary Impact Statement**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

The Department has determined that this proposed rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

### **Executive Order 12988, Civil Justice Reform**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule, when published as a final rule, is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its

provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

### **Civil Rights Impact Analysis**

The Department has reviewed this proposed rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, the Department has determined that this rule will not in any way limit or reduce the ability of protected classes of individuals. The Department has reviewed this proposed rule in accordance with USDA Regulation 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability.

The changes to SNAP regulations in this proposed rule are required by law and are not intended to limit the participation of any group of individuals in the SNAP program.

Impact on Households: This mandatory change will impact all households uniformly, regardless of status in a protected class. Although LIHEAP and other similar energy assistance program payments are issued by agencies other than USDA, FNS understands that these payments are not disseminated to specific portions of the population based on status in a protected class. Nor does FNS have information indicating that particular protected classes receive these payments.

In States that do not provide minimum LIHEAP payments greater than \$20, the new legislation may affect the number of households that qualify for the HCSUA and may cause a reduction to those households' monthly SNAP benefit amounts. However, households that previously qualified for the HCSUA based on the receipt of a \$20 or less LIHEAP payment may still qualify for the HCSUA if they incur heating or cooling expenses. Only those households without actual heating and cooling costs will experience a benefit change due to the implementation of this provision of the Agricultural Act of 2014.

Further, FNS specifically prohibits the State and local government agencies that administer the program from engaging in discriminatory actions. Discrimination in any aspect of program administration is prohibited by SNAP regulations, the Food and Nutrition Act of 2008, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and Title VI of the Civil Rights Act of 1964. Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with these requirements and the regulations at 7 CFR 272.6.

Impact on State Agencies: State agencies have already implemented this requirement, and have already completed necessary changes to eligibility systems, manuals, and training procedures for staff. Also, although State agencies had some flexibility to stagger the application of this provision to ongoing caseloads, at this point, the new requirements are being used to determine program eligibility for all new applicants and ongoing cases.



Training and Outreach: SNAP is administered by State agencies which communicate program information and program rules based on Federal law and regulations to those within their jurisdiction, including individuals from protected classes that may be affected by program changes. After the passage of the Agricultural Act of 2014, FNS worked with State agencies to ensure their understanding of the changes required by Section 4006. FNS released an implementation memorandum on this provision with all State agencies on March 5, 2014. In response to various State agencies' questions on LIHEAP-related issues, FNS shared guidance through a Question & Answer memorandum on April 7, 2014 and a second Q&A memorandum on August 20, 2014 to address the State agencies' questions and concerns and ensure clarity on requirements for implementing the requirement.

FNS also maintains a public website that provides basic information on each program, including SNAP. Interested persons, including potential applicants, applicants, and participants can find information about these changes as well as State agency contact information, downloadable applications, and links to State agency websites and online applications.

After careful review of the rule's intent and provisions, and the characteristics of SNAP households and individual participants, the Department has determined that this proposed rule will not have a disparate impact on any group or class of persons.

#### **Executive Order 13175**

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal

Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FNS has assessed the impact of this proposed rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under EO 13175. On February 18, 2015, the agency held a webinar for tribal participation and comments. No comments were received. If a Tribe requests consultation, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 13200) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. This proposed rule does not contain information collection requirements subject to approval of OMB under the Paperwork Reduction Act of 1994. State agencies were required to make minimal, one-time changes to their eligibility systems, manuals, and training procedures for staff by May 5, 2014 to comply with the provisions of the statute. Other minimal burdens imposed on State agencies by this proposed rule are usual and customary within the course of their normal

business activities.

### **E-Government Act Compliance**

The Department is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### **List of Subjects in 7 CFR Part 273**

Determining household eligibility and benefit levels, Income and deductions.

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Accordingly, 7 CFR part 273 is proposed to be amended as follows:

### **PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS**

1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

2. In §273.9, revise paragraph (d)(6)(iii)(C) to read as follows:

#### **§273.9 Income and deductions.**

\* \* \* \* \*

(d) \* \* \*

(6) \* \* \*

(iii) \* \* \*

(C)(1) A standard with a heating or cooling component must be made available to the following households:

- (i) Households that incur heating or cooling expenses separately from their rent or mortgage;
- (ii) Households in rental housing who are billed by their landlords on the basis of individual usage or who are charged a flat rate separately from their rent. However, households in public housing units which have central utility meters and which charge households only for excess heating or cooling costs are not entitled to a standard that includes heating or cooling costs based only on the charge for excess usage, unless the State agency mandates the use of standard utility allowances in accordance with paragraph (d)(6)(iii)(E) of this section; and
- (iii) Households that receive a payment or on behalf of which a payment was made under the Low Income Home Energy Assistance Act of 1981 (LIHEAA) or other similar energy assistance program, if in the current month or in the immediately preceding 12 months and such payment was greater than \$20 annually. Other similar energy assistance programs are separate home energy assistance programs designed to provide heating or cooling assistance through a payment received by or made on behalf of low-income households. A payment received by a household or made on behalf of a household under LIHEAA or other similar energy assistance program must be quantifiable in order to confer eligibility for the heating and cooling standard utility allowance. A quantifiable payment is one that the State agency quantifies, in dollars. The State agency shall document the date and receipt of a payment made under LIHEAA or other similar energy assistance program to ensure the payment was received in the current month or the immediately preceding 12 months and exceeds \$20 annually. In determining a household's eligibility for the HCSUA, State agencies shall not consider anticipated

receipt of a payment to be an actual payment received under the LIHEAA or other similar energy assistance program. However, for purposes of this subclause, a State agency may consider a payment under the LIHEAA or other similar energy assistance program to be received by the household or on behalf of the household if the household is scheduled to receive the payment in the current month. In a case where a payment is scheduled to be received in the current month and the payment is not actually made within that month, the State agency is responsible for determining whether an overissuance has occurred and, if so, establishing a claim against the household for any benefits issued in error in accordance with the requirements at 7 CFR 273.18. If a household that has received a payment made under the LIHEAA or other similar energy assistance program or such a payment has been made on a household's behalf and the household subsequently splits into two SNAP households, the State agency must determine which one household is eligible for the heating and cooling standard utility allowance as a result of receiving that payment.

(2) A household that has both an occupied home and an unoccupied home is only entitled to one standard.

\* \* \* \* \*

3. In §273.10, revise paragraph (d)(6) to read as follows:

**§273.10 Determining household eligibility and benefit levels.**

\* \* \* \* \*

(d) \* \* \*

(6) Energy Assistance Payments. The State agency shall prorate energy assistance payments as provided for in § 273.9(d) of this part over the entire heating or cooling season the payment is intended to cover.

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Kevin Concannon  
Under Secretary for Food, Nutrition, and  
Consumer Services

April 12, 2016  
Date

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